

Court No. - 15

Case :- CRIMINAL APPEAL No. - 362 of 2009

Appellant :- Raksha Ram Verma

Respondent :- State of U.P.

Counsel for Appellant :- Ambrish Kumar Pandey, Manoj Kumar Tripathi

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard learned counsel for the appellant as well as learned A.G.A. for the State and gone through the record.

2. The instant criminal appeal under section 374(2) CrPC has been filed against the impugned judgment and order dated 29th January, 2009 passed by the learned Additional District and Sessions Judge, Fast Track Court No. 3, Gonda in Special Sessions Trial No.65 of 2005, arising out of Case Crime No.021 of 2002, under sections 323, 504 and 506 IPC lodged at police station Dhanepur, district Gonda whereby the appellant has been convicted under sections 323, 504 and 506 IPC read with sections 3(i)(x) S.C./S.T. Act and has been sentenced to undergo one year's simple imprisonment under section 323 IPC, one month's simple imprisonment each under sections 504 and 506 IPC along with fine and default clause and six months' simple imprisonment under section 3(i)(x) S.C./S.T. Act along with fine and default clause.

3. Brief facts, necessary for disposal of the instant appeal, appears to be that an FIR was lodged by the informant- Smt. Sitapati against the appellant alleging therein that on the basis of prior enmity on 02.01.2002 at about 10 a.m. the appellant addressed her with casteist remarks and also abused her and on asked to refrain, he assaulted her whereby she became

unconscious and on hearing her hue & cry, Maniram, Murlidhar and many other villagers arrived at the scene of the crime. She was medically examined. Since the local police was in connivance with the appellant, FIR of the incident was not registered and, therefore, she, was compelled to move an application to the S.P. Gonda on 05.01.2002.

4. On the basis of the aforesaid written information, under the orders of the S.P. concerned dated 07.01.2002, the FIR was lodged at police station Dhanepur, district Gonda under Sections 323, 504 and 506 IPC read with sections 3(i)(x) S.C./S.T. Act.

5. Investigation of the F.I.R. commenced and after recording statements of the informant/injured and many other persons and collecting medical injury report of the informant and by preparing the site-plan, the investigating officer had submitted charge-sheet against the appellant.

6. The trial court framed charges against the appellant under sections 323, 504 and 506 IPC read with sections 3(i)(x) S.C./S.T. Act to which the appellant denied and claimed trial.

7. The prosecution, in order to prove its case beyond reasonable doubt before the trial court, relied on the oral testimony/evidence of PW-1- Smt. Sitapati (informant), PW-2- Murlidhar, PW-3 - Maniram, PW-4 - Tribhuwan Nath Tripathi (investigating officer) and PW-5- Nityanand (doctor) and also relied on the documentary evidence e.g. chik-FIR, written information, G.D. Kayami, medical injury report of the informant/injured and charge-sheet etc.

8. After completion of the evidence by the prosecution, statement of the appellant-accused was recorded under section

313 CrPC wherein he denied the evidence produced by the prosecution, and in support of his defence, he had produced the documentary evidence, however, he did not produce any witness.

9. The trial court, after appreciating the evidence available on record, has found the case of the prosecution proved against the appellant and convicted/sentenced him in the manner described in 2nd paragraph of this judgment.

10. Being aggrieved by his conviction and sentencing, the appellant has preferred the instant appeal.

11. Learned counsel for the appellant, while referring to the judgment and order passed by the trial court, vehemently submits that the trial court has committed grave error/illegality in convicting the appellant for the offence which has never been committed by him. It is further stated that it has been admitted by the star witness of this crime, namely, Smt. Sitapari (injured/PW-1) that casteist remarks were addressed to her when she was alone. Thus, the casteist remarks were not addressed in public view/domain or in presence of any person and, therefore, if the casteist remarks were addressed in isolation, the same may not attract any penal provision of the S.C./S.T. Act and, hence, the trial court has materially erred in convicting the appellant for committing offence under sections 3(i)(x) S.C./S.T. Act.

12. It is further submitted that the trial court has also committed illegality in appreciating the evidence of the victim so far as the sustaining of injuries by her is concerned as allegations, as levelled in her statement recorded before the Magistrate, were not corroborated by the medical evidence and, therefore, benefit of doubt, which has emerged in the case, should have been

extended to the appellant. It is further submitted that the prosecution has failed to prove its case beyond reasonable doubt before the trial court and, hence, the appellant is entitled to be acquitted of all the charges framed against him.

13. On the other hand, learned A.G.A., representing the State, submits that the trial court has not committed any illegality either in convicting the appellant under the relevant penal provisions or in sentencing him as appropriate punishment appears to have been awarded to the appellant and the case of the prosecution was proved beyond reasonable doubt before trial court.

14. In rebuttal, learned counsel for the appellant submits that as of now the age of the appellant is about 69 years. He is an old person and is not having any criminal antecedent to his credit and he may kindly be released on probation of good conduct.

15. Having heard learned counsel for the parties and having perused the record, it is reflected from the statement of the informant/injured (Smt. Sitapati) recorded before the trial court, which has also been transcribed by the trial court at relevant place of its judgment, that when the alleged incident had occurred, the informant/injured (Smt. Sitapati) was alone. She has admitted in categorical terms that it is only when she raised alarm the eye-witnesses had arrived, therefore, it appears to be an admitted situation that even if any casteist remarks were addressed to her, the same were addressed in isolation and, therefore, the same may not be termed as has been said in public view/domain. Thus, in view of admission by the PW-1 (Smt. Sitapati) that the casteist remarks were addressed when she was alone, in the considered opinion of this Court, penal provisions, as contained under sections 3(i)(x) S.C./S.T. Act are not attracting and, therefore, the trial court appears to have

committed illegality in convicting the appellant for offence under sections 3(i)(x) S.C./S.T. Act.

16. So far as the conviction of the appellant pertaining to Section 323, 504 and 506 IPC is concerned, PW-1 in her evidence before the trial court has stated that she was also assaulted by the appellant and PW-5 (Dr. Nityanand), who had medically examined the injured, has noticed simple injuries in the nature of contusions on left elbow, right hand and right thigh of the informant. Apart from the informant, the prosecution has relied on the statement of eye-witnesses, Murlidhar (PW-2) and Maniram (PW-3) and they have corroborated the testimony of the informant with regard to physical assault committed by appellant, but both of these witnesses have not supported in categorical terms that any abuse or intimidation was given to the informant in their presence. Thus, having considered all the evidence tendered before the trial court, offence only under section 323 IPC was established and proved beyond reasonable doubt against the appellant, however, the offence under section 504 and 506 IPC appears to have been not proved beyond reasonable doubt and, therefore, in this scenario, the trial court also appears to have committed mistake in convicting the appellant for committing the offence under sections 504 and 506 IPC also, however, as the informant/injured had sustained injuries which have also been fortified and she has in categorical terms stated to have been assaulted by the appellant, no illegality appears to have been committed by the trial court so far as the conviction of the appellant under section 323 IPC is concerned.

17. It is submitted by the learned counsel for the appellant that since this Court has not found the case of the prosecution proved beyond reasonable doubt for the offence under section

3(i)(x) S.C./S.T. Act and the appellant has been found guilty of the offence under section 323 IPC and his age as of now is more than 69 years and he is not carrying any criminal history, the benefit of The Probation of Offenders Act, 1958 (hereinafter referred to as the 'Act of 1958') may kindly be extended in favour of the appellant.

18. The bar of extending the benefit of the Act, 1958 is only with regard to offence committed by the appellant under sections 3(i)(x) S.C./S.T. Act. Since, this court has not found case of the prosecution proved beyond reasonable doubt against the appellant with regard to the offence under the S.C./S.T. Act, in the considered opinion of this court, keeping in view the fact that the age of the appellant is about 69 years and the incident in question is of 2002 and there is no untoward incident had occurred between the parties for the last 22 years and they appear to be living in peace, in the considered opinion of this Court, the benefit of Section 4 of the Act of 1958 may be extended to the appellant, subject to the payment of compensation by him, as provided under Section 5 of the Act of 1958.

19. Thus, the judgment and order of the trial court, so far as the conviction of the appellant under section 323 IPC only is concerned, the same is hereby ***affirmed***. However, the conviction and sentencing of the appellant under remaining sections of the IPC and S.C./S.T. Act is concerned, the same is not sustainable and that part of the impugned judgement and order passed by the trial court is ***set-aside***. Resultantly, the appeal is ***allowed partly*** with following modification.

20. The conviction of the appellant-convict recorded by the trial court under section 323 IPC is ***affirmed***. However, sentencing of the appellant- convict is modified to the extent that he is

provided the benefit of Section 4 of the Act of 1958 and is released on probation of good conduct on the condition that he will keep peace and good behavior/conduct for two years from today and shall file two sureties each to the tune of Rs. 50,000/- along with his personal bond before the trial court and also an undertaking to the effect that he shall maintain peace and good behavior/conduct during this period of two years from today and will not indulge himself into any criminal activity.

21. In case, breach of any of the condition mentioned above is proved, appellant will be subjected to undergo the whole sentence, as inflicted by the trial court under section 323 IPC. The bonds aforesaid will be filed by the appellant-convict within one month from today before the trial court.

22. As provided under Section 5 of the Act of 1958, the appellant shall deposit compensation of Rs. 10,000/-(Rupees Ten Thousand) within two months from today, which the trial court shall, on due identification/verification, shall pay to the victim, namely, **Smt. Sitapati** and if she is unfortunately no more, to her legal heirs, in equal proportion, as the case may be.

23. If the amount of Rs.10,000/- (Rupees Ten Thousand) is not deposited by the appellant within the time indicated above, the trial court shall treat the same as breach of condition of personal bond and shall issue coercive process against the appellant, requiring him to serve out the punishment, as awarded by the trial court under section 323 IPC.

24. Let copy of this judgement as well as the record of trial court be transmitted to the concerned trial court forthwith for necessary compliance.

Order Date :- 2.9.2024MVS/-